

Hearing Date: October 17, 2017 at 10 a.m.
Objection Deadline: October 10, 2017, 2017
at 4 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
)	
INTERNATIONAL SHIPHOLDING)	Case No. 16-12220 (SMB)
CORPORATION, <i>et al.</i> ,)	
)	Jointly Administered
)	
)	
Debtors.)	

**MOTION OF THE MEBA MEDICAL AND BENEFIT PLAN, THE MEBA TRAINING
PLAN, AND THE MEBA JOINT EMPLOYMENT COMMITTEE REQUESTING
PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

The MEBA Medical and Benefit Plan (the “Medical Plan”), the MEBA Training Plan (the “Training Plan”), and the MEBA Joint Employment Committee (the “JEC”) (collectively, the “Plans”), creditors in the above-captioned case, file this motion, by and through its counsel, Slevin & Hart, P.C., requesting that the Court grant payment to the Plans for post-petition contributions and interest due to them as an administrative expense pursuant to 11 U.S.C. § 503(b)(1)(A) in the total amount of \$25,447.25 (\$25,030.28 in contributions and \$416.97 in interest).

INTRODUCTION & BACKGROUND

1. The Marine Engineers Beneficial Association District No. 1 PCD ("Union") is a labor union that represents licensed engineering officers who work on board U.S. flagged vessels ("Licensed Engineering Officers"). Declaration of Ann Gilchrist (hereinafter "Gilchrist Decl."), attached hereto as **Exhibit A**, at ¶ 2. The Union represents the Licensed Engineering Officers who work on the vessels operated by three of the Debtors: Waterman Steamship Corporation, Sulphur Carriers Inc., and Central Gulf Lines, Inc. (collectively referred to as the "Signatory Debtors"). *Id.* at ¶ 3. The Licensed Engineering Officers are responsible for operating, maintaining and repairing the vessels' propulsion plant and other auxiliary machinery and equipment on the vessels. *Id.* at ¶ 3. The Signatory Debtors are signatories to collective bargaining agreements ("CBAs") with the Union. *Id.* at ¶ 5.

2. Pursuant to the CBAs, the Signatory Debtors were obligated to remit monthly contributions to the Medical Plan, the Training Plan, and the JEC in order to provide health benefits, training, and certain other benefits to the Licensed Engineering Officers who work on the vessels operated by the Signatory Debtors. Gilchrist Decl. at ¶ 6. Contributions to the Medical Plan, the Training Plan, and the JEC are based upon a set rate per employee for each day worked. *Id.*

3. The Medical Plan and the Training Plan are multiemployer benefit plans governed by the Employee Retirement Income Security Act of 1980 ("ERISA"). The JEC is a jointly-trusted fund. Gilchrist Decl. at ¶ 7.

4. During the post-petition period, the Signatory Debtors remitted contributions to the Plans, but not at the correct rate under the applicable CBAs and certain Memoranda of Understanding that placed contribution rate increases into effect as to the contributions due to the

Plans effective as to Debtor Sulphur Carriers, Inc. on July 1, 2016, effective as to Debtor Waterman Steamship Corporation on January 1, 2016, and effective as to Debtor Central Gulf Lines, Inc. on January 1, 2016. The Signatory Employers only paid at the prior rate. Gilchrist Decl. at ¶ 8.

5. Under the Settlement Agreement with the MEBA Benefit Funds, dated February 13, 2017, only claims owed through the date of the settlement agreement (February 13, 2017) were compromised. Accordingly, the Signatory Debtors owe contributions at the higher rate to the Plans from February 13, 2017 through July 3, 2017 (the effective date of the Reorganization Plan). Gilchrist Decl. at ¶ 9.

6. Pursuant to the Plans' Delinquency Policy, contributions shall be due and payable on the first day of the calendar month ("Due Date") for (a) voyages terminated during the calendar month preceding the due date; (b) normal operations of each vessel during the calendar month immediately preceding the Due Date; (c) all other employment during the calendar month immediately preceding the Due Date for which the company is required to make contributions; and (d) billings sent out by the Plan during the calendar month immediately preceding the Due Date. A contributing employer shall be considered delinquent if it has not made payment by the tenth day following the Due Date ("Delinquency Date"). Additionally, the Plans' Delinquency Policy requires contributing employers, such as Waterman, to pay interest at the rate of prime plus 5% if contributions are not received by the Plans by the 5th business day occurring on or after the Delinquency Date. Such interest shall be computed on a monthly basis starting on the Due Date. One month's interest shall be assessed for each whole or partial calendar month thereafter that such contributions remain unpaid. Gilchrist Decl. at ¶ 10.

7. As applicable to the subject delinquent contributions, the prime rate utilized is 4%, making the applicable interest rate to be applied to the delinquencies 9%. Gilchrist Decl. at ¶ 11.

8. As a result of the Signatory Employers' failure to pay the increased contractual contribution rates, the Plans have calculated that the Signatory Employers owe the following amounts in post-petition contributions and interest to the Plans:

Central Gulf Lines, Inc.

Amounts owed to Plans by Central Gulf Lines, Inc. from February, 2017 – June 2017:

Medical Plan: Contributions: \$7,850.48; Interest: \$130.78 (through present)

Training Plan: Contributions: \$1,131.60; Interest: \$18.85 (through present)

JEC: Contributions: \$1,897.79; Interest: \$31.61 (through present)

Sulphur Carriers Inc.

Amounts owed to Plans by Sulphur Carriers, Inc. from February, 2017 – June 2017:

Medical Plan: Contributions: \$2,669.92; Interest: \$44.48 (through present)

Training Plan: Contributions: \$1,370.82; Interest: \$22.84 (through present)

JEC: Contributions: \$1,370.82; Interest: \$22.84 (through present)

Waterman Steamship Corporation

Amounts owed to Plans by Waterman Steamship Corporation from February, 2017 – June 2017:

Medical Plan: Contributions: \$6,928.66; Interest: \$115.42 (through present)

Training Plan: Contributions: \$957.11; Interest: \$15.94 (through present)

JEC: Contributions: \$853.08; Interest: \$14.21 (through present)

Gilchrist Decl. at ¶ 12.

LAW & ARGUMENT

The Plans are Entitled to Receive Payment at the Contractual Rate as an Administrative Expense Claim

The labor of the Licensed Engineering Officers who worked on the vessels operated by the Signatory Debtors allowed the Debtors to continue to operate and generate much needed revenue for the benefit of the Estate and thus was a necessary expense of preserving the Estate. Post-petition contributions owed to employee benefit plans pursuant to an unexpired CBA are entitled to payment as an administrative expense. *San Rafael Baking Co. v. Northern Cal. Bakery Drivers Sec. Fund (In re San Rafael Baking Co.)*, 219 B.R. 860, 867 (B.A.P. 9th Cir. Cal. Mar. 18 1998); *see also In re 1655 Broadway Rest. Corp.*, 1997 U.S. Dist. LEXIS 2479, at * 4-6 (S.D.N.Y. Mar. 5, 1997); *In re Sen-Wel Indus.*, 1993 Bankr. LEXIS 1895, at *9 (U.S. Bankr. W.D.N.Y. Mar. 17, 1993) (holding that interest that accrues on a claim for post-petition contributions is also allowed as an administrative expense). Accordingly, the Plans are entitled to payment of the delinquent post-petition contributions in the total amount of \$25,030.28 and interest thereon in the amount of \$416.97 as an administrative expense under 11 U.S.C. § 503(b)(1)(A).

CONCLUSION

For the foregoing reasons, the Medical Plan, the Training Plan, and the JEC respectfully requests that the Court grant administrative priority for these contributions and interest pursuant to 11 U.S.C. § 503(b)(1)(A).

Dated: August 17, 2017
Washington, D.C.

SLEVIN & HART, P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2017, I caused the foregoing to be filed on CM/ECF for service to all record counsel.

/s Jeffrey S. Swyers
Jeffrey S. Swyers

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